IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1297 OF 2007
IN
CIVIL APPLICATION NO.833 OF 2002
IN
SECOND APPEAL ST.NO.28659 OF 2002

Nivrutti Dhondiba Shinde
(since deceased) through LRs.
Mrs.Parvatibai N.Shinde & Ors .. Applicants.
Vs.
Sadashiv Rambhau Kakade & Ors. .. Respondents.

Mr.Prathmesh Bhargude i/b Sugandh Deshmukh for the applicants.
None for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 4TH OCTOBER, 2007.

P.C.:

. Heard learned counsel for the applicants.

2. By this civil application the applicants are seeking restoration of civil application no.833 of 2002 in second appeal (St.) No.28659 of 2002. There is delay of more than four years in filing this application.

3. Civil application no.833 of 2002 was filed for condonation of delay in filing the second appeal. The second appeal was filed against concurrent judgments of the courts below by which the suit filed

by the respondent-plaintiff was decreed. The main relief in the suit was in nature of permanent injunction. It would be advantageous to reproduce the operative part of the judgment of the trial Court which has been confirmed by the appeal court in the appeal. The operative part of the order read thus:

> "1. The suit is hereby partly decreed with costs.
>
> 2. The prayer or the declaration that the judgment and decree passed in RCS No.354/69 is not binding of the plaintiff is hereby rejected.
>
> 3. The prayer regarding declaration that the suit properties are declared and allotted to the share of the defendant no.1 to 3 is hereby rejected.
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> 4. The defendant no.4 is hereby permanently restrained from seeking possession from the plaintiff of the suit lands on the basis of precept or partition till its correction to the effect that the suit properties to be allotted to the share of the defendant no.4 should be shown as allotted to the share of the defendant no.1 to 3 by moving the competent rev. authority in pending execution proceedings No.588/1974.
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> 5. A decree be drawn up accordingly."

4. Mr.Bhargude, learned counsel for the applicants took me through paragraphs 3 to 8 of the civil application and submitted that the delay in filing this application has been sufficiently explained by the applicants. From perusal of the contents of aforesaid paragraphs, in my opinion, the cause shown is not sufficient. Taking overall facts

and circumstances of the case in view and the nature of decree the prayer for condonation of delay subject to payment of cost also deserves to be rejected. In the circumstances the civil application stands rejected. Consequently, the other civil applications, if any, and the second appeal also stands disposed of.

(D.B.BHOSALE, J.)